

Rule 4, Ariz. R. Crim. P.

Initial appearance and arraignment, in general.....Revised 12/2009

Rule 1.4(b), Ariz. R. Crim. P., defines “initial appearance” as the “[f]irst appearance before a court by a defendant for the purpose of advising the defendant of the charge or charges which have been or will be filed, advising the defendant of rights and determining conditions of release.” Rule 1.4(c) defines “arraignment” as a “[c]ourt appearance before a court by a defendant for the purpose of advising the defendant of the charge or charges which have been filed, accepting a plea and setting additional court dates as necessary.” Thus, at either an initial appearance or an arraignment, the defendant is advised of the charges that have been, or will be, filed against him.

A.R.S. §§ 13-3897 and 13-3898 codify a peace officer’s duty to take an arrested person before a magistrate for an initial appearance “without unnecessary delay.”¹ Different procedures apply depending on whether or not the arresting officer has a person in custody pursuant to an arrest warrant. When the officer arrests a person *with* a warrant, A.R.S. § 13-3897 says, “the officer making the arrest shall without unnecessary delay take the person arrested before the magistrate who issued the warrant or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county.” Rule 4.1(c) then sets out the details to be followed when a person arrested *with* a warrant is taken before a magistrate.

¹In addition, A.R.S. § 11-441(A)(2) specifically requires the sheriff to “Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense.”

However, when an officer arrests a person *without* a warrant, A.R.S. § 13-3898 provides that the arrested person “shall without unnecessary delay be taken before” a magistrate, and “a complaint shall be made before the magistrate setting forth the facts, and the basis for his statement of the facts, showing the offense for which the person was arrested.” Rule 4.1(b) requires that a person arrested *without* a warrant be taken before a magistrate, “whereupon a complaint, if one has not already been filed, shall promptly be prepared and filed.” If no complaint is filed within 48 hours after the initial appearance before the magistrate, the defendant must be released from jail. *Id.*

In the alternative, an officer who has arrested a person for a misdemeanor or petty offense “may release the arrested person from custody” under A.R.S. § 13-3903, rather than taking the person to a magistrate under the procedure set forth in A.R.S. §§ 13-3897 and 13-3898. This “cite and release” procedure requires the officer to prepare “a written notice to appear and complaint” informing the released person when and where he must appear. The arrested person must promise to appear by signing a copy of this notice, and failing to honor that promise is a class 2 misdemeanor. A.R.S. § 13-3903 (D)(3), (F); § 13-3904. The officer must then deliver the notice and complaint to the magistrate.

When an arrested person is in custody, A.R.S. §§ 13-3897 and 13-3898 require an officer to take the arrested person before a magistrate “without unnecessary delay.” Rule 4.1(a), Ariz. R. Crim. P., states, “If the person is not brought before a magistrate within 24 hours after arrest, he or she shall immediately be released.” Thus, the Rule establishes that the phrase “without unnecessary delay” in those statutes means “within 24 hours after arrest.”

Rule 4.2(a), Ariz. R. Crim. P., generally provides the steps for the magistrate to follow at the initial appearance. In all cases, the magistrate must determine the defendant's name and address and, if necessary, amend the formal charges to reflect the defendant's true name. The magistrate must inform the defendant of the charges against him and advise him of his right to counsel and his right to remain silent. The magistrate then determines "whether probable cause exists for the purpose of release from custody." If the magistrate does not find probable cause, the defendant must immediately be released. If the defendant is eligible for appointed counsel and requests counsel, the magistrate appoints counsel for the defendant. The magistrate must consider any views offered by the victim on the release issue and then determine the conditions of release under Rule 7.2 and whether the defendant is unbailable under Article 2, § 22 of the Arizona Constitution and A.R.S. § 13-3961 (includes capital offenses, sexual assault, sexual conduct with or molestation of a minor under the age of 15, or a serious felony when there is probable cause to believe that the defendant is an illegal alien). When a defendant has the potential to be held without bail, a separate bail hearing should be held. *Simpson v. Owens*, 207 Ariz. 261, 270, 85 P.3d 478, 487 (App. 2008). For "summoned defendants" charged with sex offenses, DUI offenses, or domestic violence offenses as defined in A.R.S. § 13-3601, the magistrate "shall order that the defendant be fingerprinted" if the magistrate has "reasonable cause to believe that the defendant was not previously fingerprinted."

Rule 4.2(b) provides additional procedures for defendants charged with misdemeanors or indicted for felony offenses. This Rule gives the defendant the option to "be arraigned in the manner prescribed by Rule 14, if counsel is present or waived,"

and if the magistrate has jurisdiction to try the charged offense. If the magistrate lacks jurisdiction to try the offense, the magistrate must “transfer the case to the proper court for arraignment.”

Rule 4.2(c) provides additional procedures for defendants charged with felonies by complaint rather than indictment. For such defendants, the magistrate must also inform the defendant of his right to a preliminary hearing and explain how he may waive that right. Unless the defendant waives his right to a preliminary hearing, the magistrate must set the matter for a preliminary hearing under Rule 5.1.

The Comment to Rule 4.1 states in part that prosecutors are not required to appear at defendants’ initial appearances. Instead, a law enforcement officer can complete the release questionnaire and appear with the accused before the magistrate. The Comments also state that the rules require each county’s presiding judge to ensure that at least one magistrate is available within the county every day.

Rule 7.4(a), Ariz. R. Crim. P., states that at the initial appearance, the magistrate must determine the conditions of release for the defendant. “The court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon report of a violation.”